247

SUPREME COURT OF THE UNITED STATES.

No. 170.

THE UNITED STATES, APPELLANTS,

vs.

Barr

BURROUGHS E. ~~CAN~~ AND JOHN PECK, CLAIMANTS OF 10 BOXES, 20 HALF BOXES, 6 QUARTER BOXES OF RAISINS, 4 KEGS OF GRAPES, &c.

ON APPEAL FROM THE COURT OF APPEALS FOR THE TERRITORY OF FLORIDA.

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J. & G. S. Gideon, printers.

Pleas at the court-house, in the city of Tallahassee, before the honorable judges of the court of appeals for the Territory, at the January term, 1845, of said court.

Be it remembered, that heretofore, to wit, on the sixth day of January, A. D. 1845, came the United States of America, by Charles S. Sibley, esq., district attorney of the United States for the middle district of Florida, and filed with the clerk of the court of appeals for the Territory of Florida the following transcript:

Before the honorable Isaac H. Bronson, judge of the superior court for the district of East Florida, in admiralty.

Be it remembered, that on the twentieth day of November, in the year of our Lord one thousand eight hundred and forty-three, Thomas Douglas, esquire, attorney of the United States for the district of East Florida, brought and filed in the clerk's office of the said court his libel, in the name and on behalf, as well of the United States as of Augustus W. Walker, esquire, collector of the port and district of St. Augustine, in the district aforesaid, and all other persons concerned, against ten boxes, twenty half boxes, and six quarter boxes of raisins, four kegs of grapes, and two boxes of oil; which said libel is in the words and figures following, to wit:

United States of America:

To the honorable Isaac H. Bronson, judge of the superior court for the district of East Florida.

Be it remembered, that on the twentieth day of November, in the year of our Lord one thousand eight hundred and forty-three, before the honorable Isaac H. Bronson, judge as aforesaid, comes here into court, in his own proper person, Thomas Douglas, esquire, attorney of the United States for said district, and in the name and on behalf, as well of the said United States as of Augustus W. Walker, esquire, collector of the port of St. Augustine, in said district of East Florida, and all other persons concerned, propounds and gives the said judge to understand and be informed, that, at the time past, to wit, on the sixteenth day of November instant, at the port of St. Augustine, in the district aforesaid, and on waters navigable from the sea by vessels of ten or more tons burthen, he, the said Augustus W. Walker, collector as aforesaid, did seize, and now hath in his custody as being forfeited, ten boxes, twenty half boxes, and six quarter boxes of raisins, and four kegs of grapes, being then and there merchandise of foreign growth, and two boxes of oil, being then and there merchandise of foreign manufacture, the said raisins, grapes, and oil, being other than sea stores; for that the same raisins, grapes, and oil, at a time past, to wit, on the fifteenth day of November instant, were brought to the said port of St. Augustine (from the port of New York, in the district of New York) on board of

a certain vessel called the schooner Amos Birdsall, (which same schooner had before that time, and then and there was licensed to carry on the coasting trade,) and then and there belonging to, or were consigned to, B. E. Can & Co., of St. Augustine aforesaid; and then and there were *not satisfied* in the manifest of the cargo of the said vessel *as is required* by law, contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Wherefore, the said attorney of the United States prays advisement of the court here in the premises, and for monition and other proper process, to the end that the same may be decreed to remain forfeited accordingly.

THOMAS DOUGLAS,
U. S. attorney, &c.

Attachment and monition.

And afterwards, to wit, on the same twentieth day of November, in the year of our Lord one thousand eight hundred and forty-three aforesaid, by order of the judge of said court, an attachment was duly issued from the office of the clerk aforesaid, and monition, and delivered to the marshal of said district; which said attachment and monition were in the words and figures following, to wit:

Attachment.

The President of the United States to the marshal of the district of East Florida, greeting:

You are hereby commanded to take and safely keep, ten boxes, twenty half boxes, and six quarter boxes of raisins, and four kegs of grapes, and two boxes of oil, to answer the complaint and libel of the United States; and how you shall execute this warrant you make known to us, at the court-house in the city of St. Augustine, on the 21st day of November inst., and have then and there this writ.

In testimony whereof, the honorable Isaac H. Bronson, judge of our said court, hath caused the seal of the said court to be hereunto affixed, this 20th day of November, A. D. 1843.

GEORGE R. FAIRBANKS, *Clerk.*
THOS. DOUGLAS, *U. S. att'y.*

Marshal's return thereon.

Executed, by taking possession of the several boxes, quarter boxes, half boxes, and kegs, above specified.

Nov. 20th, 1843. JOHN BEARD, *Marshal.*

Monition.

The United States of America to the marshal of the district of East Florida, greeting:

Whereas, a libel hath been filed in the superior court of the district of East Florida, on this 20th day of November, 1843, by Thomas Douglas, esq., attorney of the United States for the eastern district of Florida, and in the name and behalf, as well of the United States as of Augustus W. Walker, esquire, collector of the port of St. Augustine

in said district, and all other persons concerned, alleging and propounding that, at a time past, to wit, on the sixteenth day of November inst., at the port of St. Augustine, in the district aforesaid, and on waters navigable from the sea by vessels of ten or more tons burthen, he, the said Augustus W. Walker, collector as aforesaid, did seize, and now hath in his custody as being forfeited, ten boxes, twenty half boxes, and six quarter boxes of raisins, four kegs of grapes, and two boxes of oil, being then and there of foreign growth and manufacture, the said raisins, grapes, and oil, being other than sea stores; for that the said raisins, grapes, and oil, at a time past, to wit, on the fifteenth day of November instant, were brought to the said port of St. Augustine from the port of New York, (in the district of New York,) on board of a certain vessel called the schooner *Amos Birdsall*, (which same schooner had before that time been, and then was, licensed to carry on the coasting trade,) and then and there belonging, or were consigned to B. E. Can & Co., of St. Augustine aforesaid; and then and there were *not certified* in the manifest of the cargo of the said vessel *as is required by law*.

And whereas, the judge of the superior court for the jurisdiction aforesaid, hath ordered and directed the twenty-first day of November instant for all persons concerned to be called and intimated to appear at the court-house in the city of St. Augustine, and show cause, if any they have, why judgment should not pass as prayed; you are, therefore, hereby commanded, authorized, empowered, and strictly enjoined, peremptorily to cite and admonish all persons whatsoever, having, or pretending to have, any right, title, interest, or claim, in or to said ten boxes, twenty half boxes, and six quarter boxes of raisins, four kegs of grapes, and two boxes of oil, by publicly affixing on the main-mast of the said vessel, and by leaving there affixed a true copy hereof, and by all other lawful means and ways whatsoever, whereby this *monition* may be made most public and notorious, to be and appear at the time and place aforesaid, before the judge aforesaid; also to attend upon every session to be held from then and there from thence until a definitive decree shall be made and promulgated in the said business inclusively, if any of them shall think fit so to do, to hear, abide by, and perform, all and singular such judicial acts as are necessary, and by *law* required to be done and expedited in the premises; and further to do and receive what unto law and justice shall appertain, under the pain of the law, and the contempt thereof, the absence and contumacy of them, and every of them, in any wise notwithstanding. And whatsoever you shall do in the premises you shall certify unto the judge aforesaid, together with these presents.

In testimony whereof, the honorable Isaac H. Bronson, judge of our said superior court for the jurisdiction aforesaid, hath caused [L. S.] the *seal* thereof to be hereunto affixed, this 20th day of November, A. D. 1843.

GEORGE R. FAIRBANKS, *Clerk.*
THOMAS DOUGLAS, *U. S. att'y.*

Marshal's return thereon.

Executed this, by nailing a copy to the main-mast of the schooner Amos Birdsall, and another on the store of B. E. Can & Co, in St. Augustine.

JOHN BEARD, *Marshal.*

November 20th, 1843.

Petition to bond the goods.

And afterwards, to wit, on the twenty-first day of November, in the year of our Lord one thousand eight hundred and forty-three aforesaid, came B. E. Can & Co., by William P. Duval, esq, their practor, and presented their petition to bond the said goods, wares, and merchandise; which said petition is in the words and figures following, to wit:

To the honorable Isaac H. Bronson, judge of the superior court of the eastern district of Florida, and of the United States court held at St. Augustine, in the said district.

The petition of B. E. Can & Co., respectfully show to your honor, that they are merchants in the city of St. Augustine, and have been regularly shipping goods from the port of New York to this district for several years past; that certain goods that were shipped to him by his partner, John Peck, residing in the said city of New York, have been seized by the collector for the district of St. Augustine, East Florida, and against which a *libel* of information has been filed before your honor in the said district, as aforesaid, alleging the same to be forfeited for a violation of certain laws of the United States. Your petitioner now prays your *honor* to order the same merchandise to be restored to him, upon his giving bond, with approved securities, to the United States in a sum equal to the value thereof, to abide the decision of the proper court thereon, pursuant to the statute *of the statute* of the United States in such case made and provided.

B. E. CAN & Co.

Eastern district of Florida,
County of St. John's, city of St. Augustine:

Appeared personally the said B. E. Can, and made oath that the foregoing is a true and just claim, and that he shall be able to make due proof thereof, as he verily believes. Before me,

GEORGE R. FAIRBANKS, *Clerk.*

Entry of record.

And afterwards, to wit, on the same twenty-first day of November, in the year 1843 aforesaid, the following entry of record was made in said cause, to wit:

The UNITED STATES
vs. } In admiralty.
TEN BOXES RAISINS, &c.

On reading and filing the petition of B. E. Can & Co., praying that certain boxes of merchandise therein specified may be delivered to them

as parties claimant, upon giving the requisite security, and entering into due stipulation therefor. It is ordered that appraisers be appointed to appraise the said merchandise so having been taken into custody by the marshal of this district, upon the libel and complaint of the said United States. And thereupon Samuel N. Wightman, George W. Cole, jr., and Joseph Hernandez, were by consent appointed such appraisers, and were duly sworn as such according to law.

Report of Appraisers.

And afterwards, to wit, on the same twenty-first day of November, in the aforesaid year of our Lord one thousand eight hundred and forty-three, the said appraisers brought and filed in said court their report, in the words and figures following, to wit:

Appraisers' report.

The undersigned having been appointed by the superior court of East Florida, at St. Augustine, to appraise several articles seized from on board the schooner Amos Birdsall by the collector of the said port of St. Augustine, and now in the possession of the marshal, have examined said articles as produced by them, viz:

Ten whole boxes of raisins, at - - - - -	$2 25
Twenty half " " - - - - - -	1 25
Six quarter boxes, at - - - - - - -	75
Four kegs of grapes, at - - - - - -	1 50
Two boxes of oil, at $6 00 per box, - - - -	6 00

The whole amount of articles appraised being seventy dollars. This we have done, and report upon oath, at St. Augustine, this twenty-first day of November, one thousand eight hundred and forty-three.

GEORGE W. COLE, Jr.
JOS. HERNANDEZ,
S. M. WAKEMAN.

Bond of claimants for goods.

And afterwards, to wit, on the 23d day of November, in the year 1843 aforesaid, came the said claimants, B. E. Can and Co., and filed herein their bond or stipulation, in the words and figures following, to wit:

Stipulation.

TERRITORY OF FLORIDA,
Eastern district, in admiralty.

Whereas a quantity of grapes, raisins, and oil have been attached and libelled in the superior court for St. John's county, as forfeited to the United States for a violation of the revenue laws, and proceedings are now pending in said court to obtain a condemnation of said goods; and whereas B. E. Can and John Peck have appeared as claimants of said goods: Now we, the undersigned, the said Can and Peck, and

William A. Forward and George Burt, their securities, do stipulate, agree, and bind ourselves, to the United States, to pay into the registry of the said court the appraised value of the said goods so attached and libelled, the same having been appraised at the sum of seventy dollars, in case the said goods shall be condemned as forfeited by the said court, or any appellate court; and we stipulate, agree with, and bind ourselves to the United States to pay all costs and charges that may be adjudged or decreed against the said claimants by said court, or any appellate court.

Whereas our hands and seals, this 23d day of November, 1843.

B. E. CAN, [L. S.]
WILLIAM A. FOWARD, [L. S.]
GEORGE BURT. [L. S.]

Acknowledged before me, in open court, this 23d day November, 1843.

GEO. R. FAIRBANKS, *Clerk.*

Entry of record.

And afterwards, to wit, on the same 23d day of December, in the year aforesaid, 1843, at the court-house aforesaid, before the court aforesaid, the following entry of record was made in said cause, in the words and figures following, to wit:

The UNITED STATES
vs.
TEN BOXES OF RAISINS, &c. } Libel.

Upon reading and filing the report of the appraisers sworn herein, and upon the filing by the said claimants, B. E. Can & Co., of the requisite bond and security for the said property, and for costs accrued, or hereafter to accrue in the prosecution of his said claim, it is ordered, that the marshal do release to the said claimants the said goods.

Answer of claimants.

And afterwards, to wit, on the twenty-fourth day of November, in the aforesaid year of our Lord one thousand eight hundred and forty-three, came the said B. E. Can and John Peck, by their practor, William P. Duval, esq., and filed their claim and answer herein, in the words and figures following, to wit:

Answer.

The claim and answer of B. E. Can & Co., to the libel filed in this honorable court by Thomas Douglas, esq., district attorney of the United States, against certain goods and merchandise specified in the said libel, belonging to the firm of B. E. Can & Co., shipped from the port of New York, in the State of New York, consigned to B. E. Can & Co., of St. Augustine, Territory of Florida.

This respondent, for answer to the said libel, says, that the said goods and merchandise, so libelled as aforesaid, are the property of said firm, and that the same are entered on the manifest, according to law, in the

cargo laden on board the schooner Amos Birdsall, of Watertown, New Jersey, Birdsall, master; and that the seizure of the same is illegal, and contrary to law; and pray that the said libel may be dismissed, with costs.

WM. P. DUVAL,
For respondent, B. E. CAN.

November 24th, 1843.

Subscribed and sworn to, this 24th November, 1843.

GEO. R. FAIRBANKS, *Clerk*.

Exceptions of the counsel for the United States to the answer of said libellants.

And afterwards, to wit, on the 27th day of said month of November, in the year 1843 aforesaid, came Thomas Douglas, esquire, practor for the United States in this behalf, and filed in said court his exceptions to the answer of the said claimants, B. E. Can & Co.; which said exceptions are in the words and figures following, to wit:

Exceptions.

District of East Florida, superior court:

The UNITED STATES
vs.
TEN BOXES, &c., OF MERCHANDISE. } Libel in admiralty.

Now, on this day came the libellants, by Thomas Douglas, their attorney, and except to the answer of the claimants, B. E. Can & Co., for the following reasons, to wit:

First. Because the said claimants have not answered that part of the libel which charges, that the said schooner Amos Birdsall had, "before that time, been, and then (to wit, at the time of said seizure) was, licensed to carry on the coasting trade."

Second. Because the said claimants have not answered the allegation of said libel, that the said goods were seized "in waters navigable from the sea by vessels of ten or more tons burthen."

Third. Because the said claimants have not answered the allegation contained in said libel, that the goods seized were of foreign growth and manufacture, viz: that said ten boxes, twenty half boxes, and six quarter boxes of raisins, and four kegs of grapes, were then and there merchandise of foreign manufacture.

Therefore the said libellants pray that the said claimants may, by this honorable court, be required, within such time as may be deemed reasonable, to make a further and better answer to the said libel, and especially that they may be required to answer fully all the above (and all other) charges in said libel contained.

THOMAS DOUGLAS,
U. S. att'y, &c.

25/.

Entry of record.

And afterwards, to wit, on the first day of December, in the aforesaid year of our Lord one thousand eight hundred and forty-three, at the court-house aforesaid, before the court aforesaid, the following entry of record was made in said cause, to wit:

The UNITED STATES
vs.
TEN BOXES OF RAISINS, &c.

Upon reading and filing the exceptions of the attorney of the United States to the answer of the said claimants, it is ordered, that said claimants amend their answers according to such exceptions.

Amendment of answer.

And afterwards, to wit, on the same first day of December, in the year 1843, aforesaid, before the court aforesaid, came the said claimants, B. E. Can & Co., by William P. Duval, esq., their proctor, and amended their said answer in the words following, to wit:

Amendment.

TEN BOXES MERCHANDISE, etc.,
ads.
The UNITED STATES.

The proctor for the respondents admits that the schooner Birdsall is licensed for the coasting trade, and that the goods and merchandise specified in said libel are of foreign growth and manufacture, and were seized on waters navigable by vessels of ten or more tons burthen.

WM. P. DUVAL,
For respondents.

Entry of record.

And afterwards, to wit, on the second day of December, in the aforesaid year of our Lord one thousand eight hundred and forty-three, at the court-house in the city of St. Augustine, and before the judge aforesaid, the following entry of record was made in said cause, in the words and figures following, to wit:

The UNITED STATES
vs.
TEN BOXES RAISINS, &c.

And now, at this day comes Thomas Douglas, esq., counsel for said United States, and also comes William P. Duval, esq., proctor for said claimants, B. E. Can & Co., and the libel of the said United States, and the answer of the said claimants, was read; and the *manifest* of the vessel in which said goods were brought into this port having been read, and the counsel for the said claimants, as well as of the United States, having been heard thereon, and the court not yet being advised what judgment to give thereon, takes time to consider of *the* same.

Manifest of the cargo on board the schooner Amos Birdsall, of Watertown, N. J., Birdsall, master, burthen one hundred and thirty-nine tons, bound from New York to St. Augustine, E. Florida, New York, Nov. 4th, 1843.

Marks.	No.	Packages and contents.	Shippers.	Residence.	Consignees.	Residence.
J. H. B.	One	One box merchandise	W. D. Harris	New York	Judge Bronson	St. Augustine, E. F.
J. M. H.	Two	One wooden pump	John Peck	Do	J. W. Hanson	Do.
J. W. S.	Three	Eleven packages merchandise	Do	Do	J. W. Shippey	Do.
J. M. H.	Four	Nineteen do do	Do	Do	J. M. Hernandez	Do.
J. D.	Five	Two do do	Do	Do	J. Drysdale	Do.
B. E. C. & Co. [C.]	Six	Six hundred and nine packages merchandise	Do	Do	B. E. Can & Co.	Do.
	Seven	Twenty thousand brick	Do	Do	Do	Do.
	Eight	Eight hundred and twenty-nine pieces lumber	Do	Do	Do	Do.
	Nine	Fourteen packages merchandise	Do	Do	Order	Franklin, La.

Signed, EZEKIEL BIRDSALL.

Copy of permit.

I, Ezekiel Birdsall, master of the schooner Amos Birdsall, do solemnly swear to the truth of the annexed manifest, and that, to the best of my knowledge and belief, all the goods, wares, and merchandise, of foreign growth or manufacture therein contained, were legally imported, and the duties thereon paid or secured. So help me God.

Signed, EZEKIEL BIRDSALL.

Sworn to, this 4th day of November, 1843.

Signed, M. L. DAVIS, *Dy. C.*

District of New York, port of New York:

Ezekiel Birdsall, master of the schooner Amos Birdsall, of Water*man*, having sworn, as the law directs, to the annexed manifest, consisting of nine articles of entry, and delivered duplicate thereof, permission is hereby granted to the said schooner to proceed to the port of St. Augustine, in the State of Florida.

Given under our hands, at New York, this 4th day of November, 1843.

Signed, M. S. OGDEN, *Dy. naval officer.*
Signed, M. L. DAVIS, *Dy. collector.*

Decree of dismissal.

And afterwards, to wit, on the twelfth day of March, in the year of our Lord one thousand eight hundred and forty-four, at the court-house aforesaid, before the judge aforesaid, the following entry of record was made in said cause, to wit:

The UNITED STATES
vs.
TEN BOXES OF RAISINS, TWENTY *Quarter* BOXES AND SIX QUARTER BOXES OF RAISINS, FOUR KEGS OF GRAPES, AND TWO BOXES OF OIL. } Libel.

This cause having been submitted to the court, for its decision and decree thereon at the last term thereof, and the court having fully considered of the same, doth order, adjudge, and decree, in said matter as follows: that the said libel be dismissed, and that the bond given by the said parties claimant for the value of the said goods, and also —— the stipulation for costs given by them, be, and the same are hereby, annulled and vacated.

And it further appearing to the court that there was probable cause for the institution of said proceedings against the said goods by the collector, on the part of the United States, it is hereby further ordered, that a certificate of probable cause be given to said collector.

Entry of appeal on part of the United States.

And afterwards, to wit, on the twenty-third day of November, in the year of our Lord one thousand eight hundred and forty-four, at the court-house aforesaid, before the judge aforesaid, the following entry of record was made in the said cause, to wit:

The UNITED STATES, libellants,
vs.
TEN BOXES, TWENTY HALF BOXES, AND SIX QUARTER BOXES RAISINS, FOUR KEGS GRAPES, AND TWO BOXES OF OIL. } Libel.

And now, at this day comes Thomas Douglas, esq., proctor for the said United States, and prays this court that an appeal be granted in this cause on behalf of the said United States, from the decree of this court made on the 12th day of March last, dismissing the libel in this cause, to the court of appeals of the Territory of Florida; and that citation and notice of said appeal be forthwith issued by the clerk of this court to the appellees; and that the marshal of this district serve the same upon the said appellees, and make return of the same to this court.

Citation and notice of appeal.

And afterwards, to wit, on the second day of December, in the aforesaid year of our Lord one thousand eight hundred and forty-four, a citation and notice of appeal in said cause were duly issued from the office of the clerk of said court, and delivered to the marshal of said district; which said citation and notice of appeal were in the words and figures following, to wit:

Citation.

The President of the United States to Burroughs E. Can and John Peck, or to your agents, attorneys, proctors, or solicitors, greeting:

You are hereby cited and admonished that an appeal has been taken, on the part of the United States, from the decree of the superior court for the district of Florida, to the court of appeals of the said Territory, in a certain cause in admiralty, wherein you, the said Burroughs E. Can and John Peck, were claimants, of ten boxes, twenty half boxes, and six quarter boxes of raisins, and four kegs of grapes, and two boxes of oil, libelled in said court at the instance of the said United States; and that the record in said cause will be forwarded to said court of appeals, to be placed on the docket thereof, at the next term thereof to be holden on the first Monday of January next.

Witness the honorable Isaac H. Bronson, judge of said court, at the court-house in the city of St. Augustine, this 2nd day of December, A. D. 1844.

GEO. R. FAIRBANKS, *Clerk.*

Marshal's return.

Personally served the within citation on B. E. Can & Co., by showing the original, and leaving a copy thereof with him, December 14th, 1844.

JAS. KEAGH, *Dep. marshal.*

Superior court, district of East Florida:

I, George R. Fairbanks, clerk of the said court, do hereby certify,

that the foregoing twenty-one pages contain a full, true, and complete transcript of the record and proceedings in said cause.

In testimony whereof, I have hereunto set my hand, and affixed the [L. S.] seal of said court, this thirteenth day of December, A. D. 1844, at St. Augustine, E. F.

GEO. R. FAIRBANKS, *Clerk.*

At a court of appeals for the Territory of Florida, continued and held at the court-house in the city of Tallahassee, on Friday, the 31st day of January, 1845—

Present, honorable J. H. Bronson,
" " S. W. Carmack,
" " S. J. Douglas.

The UNITED STATES, appellant,
vs.
TEN BOXES, TWENTY HALF BOXES, SIX QUARTER BOXES OF RAISINS, FOUR KEGS OF GRAPES, TWO BOXES OF OIL, appellees. } In admiralty.

Burroughs E. Can and John Peck, claimants, &c., &c.

Upon an appeal from a decree of the judge of the eastern district, pronounced on the 12th day of March, 1844.

The arguments in this cause having been duly considered by the court, it is adjudged, ordered, and decreed, by this court, that the decree of the court below be affirmed. And thereupon the appellant, by Charles S. Sibley, attorney for the middle district of Florida, in open court prayed an appeal to the Supreme Court of the United States; which is allowed.

Territory of Florida, ss:

I, Richard T. Birchett, clerk of the court of appeals for the Territory of Florida, do hereby certify, that the foregoing is a true transcript of the record and proceedings had in a cause lately pending in said court, wherein the United States of America was appellant, and B. E. Can and John Peck, claimants, &c., were appellees, with all things touching the same, as fully and wholly as they now exist among the records of the said court.

In testimony whereof, I hereto set my hand, and affix the seal of the said court, at Tallahassee, this 22nd day of July, 1845.
[L. S.]

R. T. BIRCHETT, *Clerk.*

Filed, 19th January, 1846.